

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation
Against:

JOHN B. OVERTON, M.D.

Physician's and Surgeon's
Certificate No. C 38023

Respondent

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) File No. 02-2008-194414
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DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on **May 6, 2010.**

IT IS SO ORDERED **April 6, 2010.**

MEDICAL BOARD OF CALIFORNIA

By: _____

Hedy Chang
Chair, Panel B

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10 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
12

13 In The Matter Of The Accusation Against:

14 **JOHN B. OVERTON, M.D.**
420 West Acacia Street, #17
15 Stockton, CA 95203

16 Physician's And Surgeon's Certificate No. C 38023,

17 Respondent.

Case No. 02-2009-194414

OAH No. 2009060376

**STIPULATED SETTLEMENT
AND DISCIPLINARY ORDER**

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Barbara Johnston (Complainant) is the Former Executive Director of the Medical
23 Board of California. She brought this action solely in her official capacity and is represented in
24 this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Jessica M.
25 Amgwerd, Deputy Attorney General.

26 2. Respondent John B. Overton, M.D. (Respondent) is represented in this proceeding by
27 attorney Ronald E. Kaldor, whose address is 455 Capitol Mall, Suite 410, Sacramento, CA 95814.

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3. On or about May 23, 1978, the Medical Board of California issued Physician's and Surgeon's No. C 38023 to John B. Overton, M.D. (Respondent).

JURISDICTION

4. Accusation No. 02-2009-194414 was filed before the Medical Board of California, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on February 13, 2009. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 02-2009-194414 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 02-2009-194414. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits that his son cultivated large amounts of Marijuana at Respondent's residence. In acquiescing to his son's conduct, Respondent has violated Business and Professions Code section 2234(a) and section 2236(a).

1. The first step is to identify the problem.

10. *Prove or disprove:*
 a) \mathbb{Q} is not a UFD.
 b) \mathbb{Q} is a UFD.

9. Respondent agrees that his Physician's and Surgeon's license is subject to discipline and he agrees to be bound by the Medical Board of California's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This stipulation shall be subject to approval by the Medical Board. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw her agreement or seek to rescind the stipulation prior to the time the Medical Board considers and acts upon it. If the Medical Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Medical Board shall not be disqualified from further action by having considered this matter.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Medical Board of California may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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[illegible][illegible]

1 DISCIPLINARY ORDER

2 **A. PUBLIC REPRIMAND**

3 IT IS HEREBY ORDERED that Respondent John B. Overton, M.D.'s Physician and
4 Surgeon's Certificate No. C 38023 is hereby Publically Reprimanded pursuant to California
5 Business and Professions Code section 2227 (a)(4). This Public Reprimand, as set forth in
6 Accusation No. 02-2009-194414, is as follows:

7 In 2008, Respondent's adult son, who lived at the home with
8 Respondent, was accused of cultivating over 120 marijuana plants
9 at Respondent's home. Respondent's two story home was
10 reconfigured by his son to grow marijuana in four rooms, the
11 garage, and backyard, with elaborate automatic water system,
12 lighting, blowers, propane tanks, leading to the arrest of
13 Respondent and his son on September 29, 2008. On February 25,
14 2009, Respondent plead no contest to, and was convicted under
15 Penal Code section 372 [public nuisance], and Respondent's son
16 was convicted of violating Health & Safety Code section 11359
17 [possession of marijuana for sale]. This conduct contravenes
18 Business and Professions Code section 2234(a) and section
19 2236(a).

20 **B. ETHICS COURSE**

21 Within 120 calendar days of the effective date of this Decision, respondent shall enroll in a
22 course in ethics, at respondent's expense, approved in advance by the Medical Board or its
23 designee. Failure to successfully complete the course within the 120 days after the effective date
24 of the Decision is a violation and will subject Respondent to discipline.

25 An ethics course taken after the acts that gave rise to the charges in the Accusation, but
26 prior to the effective date of the Decision may, in the sole discretion of the Medical Board or its
27 designee, be accepted towards the fulfillment of this condition if the course would have been
28 approved by the Medical Board or its designee had the course been taken after the effective date
of this Decision.

Respondent shall submit a certification of successful completion to the Medical Board or its
designee not later than 15 calendar days after successfully completing the course, or not later than
15 calendar days after the effective date of the Decision, whichever is later.

///

Feb. 24, 2010 11:17AM

Vo. 4886 P. 2

ACCEPTANCE

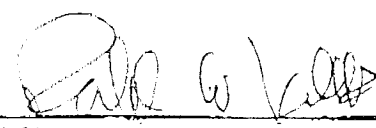
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Ronald E. Kaldor. I understand the stipulation and the effect it will have on my Physician's and Surgeon's. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 2/23/2010


JOHN B. OVERTON, M.D.
Respondent

I have read and fully discussed with Respondent John B. Overton, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 2/24/10



RONALD E. KALDOR
Attorney For Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

DATED: Feb. 24, 2010

EDMUND G. BROWN JR.
Attorney General of California
GAIL M. HEPPELL
Supervising Deputy Attorney General


JESSICA M. AMGWERD
Deputy Attorney General

Attorneys for Complainant

Exhibit A

Accusation No. 02-2009-194414

EDMUND G. BROWN JR., Attorney General
of the State of California
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Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 02-2008-194414

JOHN B. OVERTON, M.D.
420 West Acacia Street # 17
Stockton, CA 95203

ACCUSATION

Physician's and Surgeon's Certificate No. C 38023

Respondent.

Complainant alleges:

I.

PARTIES

1. Barbara Johnston (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about May 23, 1978, the Medical Board of California issued Physician's and Surgeon's Certificate Number C 38023 to John B. Overton, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2009, unless renewed.

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3. On January 1, 1990, Respondent obtained a DEA registration pertaining to Schedules II through V controlled substances. The DEA license will expire on December 31, 2010 unless renewed or revoked.

II.

STATUTORY PROVISIONS

4. This Accusation is brought before the Medical Board of California, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Bus. & Prof. Code unless otherwise indicated.

5. Bus. & Prof. Code Section 2227 provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Division deems proper.

6. Bus. & Prof. Code Section 2234 of the Code states:

§ 2234. Unprofessional conduct

The Division of Medical Quality¹ shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical Practice Act].

(b) Gross negligence.

...

(c) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

¹ Bus. & Prof. Code Section 2002, as amended and effective January 1, 2008, provides that, unless otherwise expressly provided, the term "board" as used in the State Medical Practices Act means the "Medical Board of California", and references to the "Division of Medical Quality" in the Act or any other provision of law shall be deemed to refer to the Board.

7. Bus. & Prof. Code § 2236(a), states in pertinent part, the following:

§ 2236. Conviction of offense related to qualifications, functions, or duties of physician or surgeon; unprofessional conduct; notice of pendency of action; record of conviction

(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

8. Bus. & Prof. Code Section 2238, states as follows:

§ 2238. Violation of federal or state statute or regulation regulating dangerous drugs or controlled substances; unprofessional conduct

A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

9. Bus. & Prof. Code Section 4060, states as follows:

§ 4060. Controlled substances; possession

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian. . . . This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, . . . when in stock containers correctly labeled with the name and address of the supplier or producer.

. . .

10. Health and Safety Code Section 11357, states in pertinent part the following:

§ 11357. Unauthorized possession; punishment; prior conviction; possession in school or on school grounds

(a) Except as authorized by law, every person who possesses any concentrated cannabis shall be punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment, or shall be punished by imprisonment in the state prison.

(b) Except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100). . . .

(c) Except as authorized by law, every person who possesses more than 28.5 grams of marijuana, other than concentrated cannabis, shall be punished by imprisonment in the county jail for a period of

not more than six months; or by a fine of not more than five hundred dollars (\$500); or by both such fine and imprisonment.

11. Health and Safety Code Section 11358, states as follows:

§ 11358. Unauthorized cultivation, harvesting or processing; punishment

Every person who plants, cultivates, harvests, dries, or processes any marijuana or any part thereof, except as otherwise provided by law, shall be punished by imprisonment in the state prison.

12. Health and Safety Code section 11359, states as follows:

§ 11359. Possession for sale; punishment

Every person who possesses for sale any marijuana, except as otherwise provided by law, shall be punished by imprisonment in the state prison.

13. Health and Safety Code section 11366.5, states in pertinent part, the following:

§ 11366.5. Renting, leasing, or making available for use a building, room, space, or enclosure for unlawful manufacture, storage, or distribution of controlled substance; allowing building, room, space, or enclosure to be fortified to suppress law enforcement entry to further sale of specified controlled substances; punishment

(a) Any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, who knowingly rents, leases, or makes available for use, with or without compensation, the building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance, for sale or distribution shall be punished by imprisonment in the county jail for not more than one year, or in the state prison.

14. Health and Safety Code Section 11362.82, states as follows:

§ 11362.82. Separate and distinct provisions

If any section, subdivision, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion thereof.

1 15. The Controlled Substance Act (21 U.S.C. § 801 *et. seq.*) and federal regulation
2 (21 C.F.R. §1300 *et. seq.*) regulate controlled substances in the United States. 21 U.S.C. Section
3 841(a) states in pertinent part, the following:

4 **§ 841. Prohibited acts A**

5 **(a) Unlawful acts**

6 Except as authorized by this subchapter, it shall be unlawful for
7 any person knowingly or intentionally—

8 (1) to manufacture, distribute, or dispense, or
9 possess with intent to manufacture, distribute, or
10 dispense, a controlled substance; or

11 ...

12 16. 21 U.S. C. Section 844 states in pertinent part, the following:

13 **§ 844. Penalties for simple possession**

14 **(a) Unlawful acts: penalties**

15 It shall be unlawful for any person knowingly or intentionally to
16 possess a controlled substance unless such substance was obtained
17 directly, or pursuant to a valid prescription or order, from a
18 practitioner, while acting in the course of his professional practice,
19 or except as otherwise authorized by this subchapter or subchapter
20 II of this chapter. . . .

21 17. 21 U.S. C. Section 846 and Section 858 state the following:

22 **§ 846. Attempt and conspiracy**

23 Any person who attempts or conspires to commit any offense
24 defined in this subchapter shall be subject to the same penalties as
25 those prescribed for the offense, the commission of which was the
26 object of the attempt or conspiracy.

27 **§ 858. Endangering human life while illegally manufacturing a
28 controlled substance**

 Whoever, while manufacturing a controlled substance in violation
 of this chapter, or attempting to do so, . . . creates a substantial risk
 of harm to human life shall be fined in accordance with Title 18, or
 imprisoned not more than 10 years, or both.

1 III.

2 DRUGS AT ISSUE

3 18. "Marijuana" is a Schedule I controlled substance as designated in the California
4 Health & Safety Code section 11054(d)(13), and under federal law (21 U.S.C. Section
5 812(c)(10).)

6 19. 21 U.S.C. Section 802(6) define and Section 802(22) define "controlled
7 substance" and "production", respectively as follows:

8 (6) The term "controlled substance" means a drug or other
9 substance, or immediate precursor, included in Schedule I, II, III,
10 IV, or V of this subchapter. The term does not include distilled
11 spirits, wine, malt beverages, or tobacco, as those terms are defined
12 or used in subtitle E of the Internal Revenue Code of 1986.

13 ...
14 (22) The term "production" includes the manufacture, planting,
15 cultivation, growing, or harvesting of a controlled substance.

16 IV.

17 GENERAL BACKGROUND

18 20. Respondent is the owner of real property located at 3646 North Monitor Circle,
19 Stockton, California, 95219 (hereinafter 3646 North Monitor Circle). Respondent also resides at
20 this address with his son, John Blanton Overton, Jr. In 2008, Respondent had large quantities of
21 Marijuana growing in his back yard and home. In April and May of 2008, a concerned citizen
22 complained about short stay traffic which occurred all hours of the day and night and suspected
23 drug dealing at Respondent's 3646 North Monitor Circle address. The concerned citizen also
24 informed Officer Cole that there was a propane odor coming from the residence.

25 21. Circa September 22, 2008, an anonymous caller advised the Stockton Police
26 Department about Marijuana growing in the backyard of 3646 North Monitor Circle. The
27 Stockton Police Department Narcotics Unit conducted an investigation, obtained a search
28 warrant, and on September 24, 2008, found 120 Marijuana plants at the residence. During the
29 search of the residence, Respondent's grandson, E.O., who was born in July 2008, was present.
30 E.O.'s mother, Desiree Grayboy, indicated she also resided at 3646 North Monitor Circle

1 address. Respondent, his son John Blanton Overton, Jr., and Ms. Gayagoy were arrested. Child
2 Protective Services was called and took away E.O. due to child endangerment.

3 22. At the time of the arrest, the detectives found on the first floor, against the west
4 end of Respondent's house, a room which had a small indoor grow, with smaller Marijuana
5 plants. Dried marijuana was found in the kitchen being processed next to baby bottles and baby
6 formula. Also found were several propane gas canisters, in the house and the garage. One of the
7 propane tanks in the house was attached to a GEN-1 propane CO2 generator, in one of the small
8 grow rooms, to emit more CO2. The room had artificial grow lights, and several ballasts for the
9 electricity and an automated watering system. In a locked safe was found a loaded shot gun and
10 two loaded handguns.

11 23. On September 26, 2008, the Stockton District Attorney's Office filed a criminal
12 complaint against Respondent, his son, and Ms. Gayagog. The criminal complaint alleged the
13 following violations against Respondent: (1) Penal Code § 273A(A) [child abuse/
14 endangerment]; (2) Health & Safety Code § 11359 [possession of marijuana for sale]; (3) Health
15 & Safety Code § 11358 [cultivation of marijuana]; and (4) Health & Safety Code § 11357
16 [unauthorized possession of marijuana].

17 V.

18 STATUTORY VIOLATIONS

19 FIRST CAUSE FOR DISCIPLINE

20 (Gross Negligence)
21 [Bus. & Prof. Code § 2234 (b)]

22 24. Complainant realleges paragraphs 20 through 23 above, as if fully set forth at this
23 point. Respondent is subject to disciplinary action under Bus. & Prof. Code Section 2234 (b) of
24 the Code in that he was grossly negligent in having large quantities of Marijuana produced (i.e.,
25 planted, cultivated, harvested, dried, and processed) at his residence, in violation of state and
26 federal laws. The gross negligence also includes the following conduct:

- 27 a. allowing the large quantity of Marijuana production in his home where
28 Respondent's two and a half month grandson, E.O. lived, with his mother
and Respondent's son;

- b. allowing L.O. to be placed under circumstances likely to produce great bodily harm and/or injury by placing him in a in a situation where his health was endangered;
- c. having propane tanks in his home and his garage;
- d. having a propane tank in one of the rooms which was attached to a GEN-1 propane CO2 generator to cultivate the Marijuana;
- e. having rooms with artificial grow lights, and several ballasts for the electricity and an automated watering system, Vortex power fan blower in the kitchen, a locked safe with a loaded shot gun and two loaded handguns, dried marijuana on the kitchen counter top near baby bottles and formula;
- f. having an unsafe residence with short stay traffic which occurred all hours of the day and night thereby placing the residents of the house and the neighbors in jeopardy of harm from drug trafficking; and
- g. endangering the health, safety, and welfare of the public by flouting the laws pertaining to Schedule I controlled substances.

SECOND CAUSE FOR DISCIPLINE

(Violation Of Laws Pertaining To Controlled Substances)
[Bus. & Prof. Code § 2238]

25. Complainant realleges paragraphs 20 through 24 above, as if fully set forth at this point. Respondent is subject to disciplinary action under Bus. & Prof. Code Section 2238 for unprofessional conduct in producing large amounts of Marijuana at his residence, thereby violating the following federal and state statutes and regulations regulating dangerous drugs or controlled substances:

- a. **Health & Safety Code § 11357** [unauthorized possession of marijuana];
- b. **Health & Safety Code § 11358** [cultivation of marijuana];
- c. **Health & Safety Code § 11359** [possession of marijuana for sale];
- d. **Health & Safety Code § 11366.5** [making available for use a room/space for unlawful manufacture, storage, or distribution of controlled substance];
- e. **Bus. & Prof. Code § 4060** [possessing a controlled substance without a prescription];
- f. **21 U.S.C. § 841(a)** [illegally manufacturing or distributing a

1 controlled substance];

2 g. 21 U.S.C. § 844 [possessing a controlled substance without a valid
3 prescription];

4 h. 21 U.S.C. § 846 [attempting and/or conspiring to commit offenses
5 under 21 U.S.C. Section 801 et. seq.]; and

6 i. 21 U.S.C. § 858 [creating a substantial risk of harm while
7 producing a controlled substance illegally].

8 THIRD CAUSE FOR DISCIPLINE

9 (Dishonesty/Corruption)

10 [Bus. & Prof. Code § 2234 (c)]

11 26. Complainant realleges paragraphs 20 through 25 above, as if fully set forth at this
12 point. Respondent is subject to disciplinary action under Bus. & Prof. Code Section 2234 (c) in
13 that his conduct surrounding the large amount of cultivation of Marijuana at his residence
14 constituted a corrupt act. Respondent's conduct constitutes corruption related to the
15 qualifications, functions, and/or duties of a physician within section 2234(c) of the Code.
16 Marijuana, a Schedule I drug, "has a high potential for abuse". (21 U.S.C. § 812 (b)(1)(A).)

17 27. As a physician and a physician with a DEA registration, Respondent is required to
18 obey all federal and state laws pertaining to controlled substances. The laws pertaining to
19 controlled substances are designed to protect the public health, safety and welfare; disregarding
20 these laws undermines it. Respondent cannot flout these laws in his practice of medicine, nor at
21 his residence.

22 VI.

23 FACTORS IN AGGRAVATION

24 28. On November 17, 1996, Respondent, while driving, was involved in an accident,
25 resulting in damage to property, and failed, refused, and neglected to locate or notify the driver of
26 the damage. Thus, on November 25, 1996, a misdemeanor criminal complaint, entitled, *People*
27 *v. John Blanton Overton*, Case No. ST018436A was filed in the County of San Joaquin, against
28 Respondent alleging a violation of Vehicle Code section 20002(A) [hit & run]. Respondent pled
nolo contendere and was fined \$400 and required to pay restitution.

VII.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matter herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Physician and Surgeon's Certificate No. C 38023, issued to John B. Overton, M.D.;
2. Revoking, suspending or denying approval of John B. Overton, M.D.'s authority to supervise physicians assistants, pursuant to section 3527 of the Code;
3. Ordering John B. Overton, M.D. to pay the costs of probation monitoring, if placed on probation;
4. Taking such other and further action as deemed necessary and proper.

DATED: February 13, 2009



BARBARA JOHNSTON
Executive Director

Medical Board of California
Department of Consumer Affairs
State of California
Complainant

SA2008302524
overton wpd